

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

November 4, 2008 Session

WILLIE R. BREAZEALE v. JASON E. HENSLEY, ET AL.

**Appeal from the Circuit Court for Roane County
No. 13758 Russell E. Simmons, Jr., Judge**

No. E2008-00234-COA-R3-CV - FILED JANUARY 28, 2009

Willie R. Breazeale ("Plaintiff") was involved in an automobile accident and received treatment for her injuries at Roane Medical Center ("the Hospital"). Plaintiff sued the driver of the other vehicle involved in the accident. The Hospital filed hospital liens for the care and treatment it rendered to Plaintiff. Plaintiff filed a motion to quash or reduce the hospital liens. After hearing argument on the motion to quash or reduce hospital liens, the Trial Court entered an order finding and holding, *inter alia*, that the Hospital's lien of \$2,199.04 shall be reduced by one-third representing Plaintiff's attorney's lien pursuant to Tenn. Code Ann. § 29-22-101(b) and (c). The Hospital appeals the reduction of its lien by one-third. We hold that the Hospital's lien shall not be reduced by one-third representing the Plaintiff's attorney's lien, and we modify the judgment to so reflect. We affirm the judgment as so modified.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Modified; and Affirmed as Modified; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

D. Alexander Fardon and Jeffrey J. Miller, Nashville, Tennessee for the Appellant, Roane Medical Center.

Patrick C. Cooley, Kingston, Tennessee for the Appellee, Willie R. Breazeale.

OPINION

Background

In March of 2006, Plaintiff was involved in an automobile accident in Roane County, Tennessee when her vehicle was struck by a vehicle driven by Jason E. Hensley. Plaintiff received treatment at the Hospital for her injuries sustained in the accident. Plaintiff sued Mr. Hensley, and her claim against Mr. Hensley was settled.

The Hospital filed a Notice of Hospital Lien in the amount of \$2,199.04 for care and treatment rendered to Plaintiff for injuries sustained in the accident. The Hospital later updated the lien notice to include additional charges later incurred by Plaintiff. Plaintiff filed a motion to quash or reduce the hospital liens. The Trial Court heard argument on the motion to quash or reduce the hospital liens. During that hearing, the Hospital withdrew its claim based upon the updated lien notice because those additional charges were unrelated to Plaintiff's automobile accident.

After the hearing, the Trial Court entered an order finding and holding, *inter alia*:

The hospital lien filed by Roane Medical Center on April 15, 2006 in the amount of \$2,199.04 shall be reduced by one-third (1/3) pursuant to Tenn. Code Ann. §29-22-101(b) and (c). This represents the plaintiff's attorney lien in the underlying lawsuit. Therefore, the hospital lien allowed against the plaintiff's settlement is \$1,466.76.

The Hospital appeals the Trial Court's reduction of its lien by one-third.

Discussion

Although not stated exactly as such, the Hospital raises one issue on appeal: whether the Trial Court erred in reducing the Hospital's lien by one-third representing Plaintiff's attorney's lien.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

As pertinent to this appeal, Tenn. Code Ann. § 29-22-101 provides:

29-22-101. Lien created. – Application – Priority. – (a) Every person, firm, association, corporation, institution, or any governmental unit, including the state of Tennessee, any county or municipalities operating and maintaining a hospital in this

state, shall have a lien for all reasonable and necessary charges for hospital care, treatment and maintenance of ill or injured persons upon any and all causes of action, suits, claims, counterclaims or demands accruing to the person to whom such care, treatment or maintenance was furnished, or accruing to the legal representatives of such person in the case of such person's death, on account of illness or injuries giving rise to such causes of action or claims and which necessitated such hospital care, treatment and maintenance.

(b) The hospital lien, however, shall not apply to any amount in excess of one third (1/3) of the damages obtained or recovered by such person by judgment, settlement or compromise rendered or entered into by such person or such person's legal representative by virtue of the cause of action accruing thereto.

(c) The lien herein created shall be subject and subordinate to any attorney's lien whether by contract, suit or judgment upon such claim or cause of action and shall not be applicable to accidents or injuries within the purview of the Tennessee Workers' Compensation Law, compiled in title 50, chapter 6. Any such lien arising out of a motor vehicle accident shall not take priority over a mechanic's lien or prior recorded lien upon a motor vehicle involved in such accident.

Tenn. Code Ann. § 29-22-101 (2000).

In its brief on appeal, the Hospital argues, in part:

There is no indication in the [Hospitals' Liens law, Tenn. Code Ann. § 29-22-101 *et seq.*] that a hospital that has otherwise properly perfected its lien is required to compensate its patient's attorney, or incur other costs associated with the patient's effort to recover from the party that caused her injuries.

This Court addressed this issue in a case strikingly similar to the case now before us, *Martino v. Dyer*, stating:

We interpret Tenn. Code Ann. § 29-22-101 as providing hospitals with a mechanism to ensure that those people who recover damages for injuries pay their hospital bills out of those recoveries. The hospital, of course, is not obligated to file a lien and is not precluded from other remedies available to it to collect from any patient who has not paid his or her bill.

* * *

The trial court herein read subsection (c) of Tenn. Code Ann. § 29-22-101 as subordinating the hospital's lien to [the plaintiff's attorney's] fees. We disagree and interpret the priority-setting provision to apply only where the recovery is insufficient to meet both the attorney's lien and the hospital's lien.

We agree with the reasoning of the Court of Appeals of Indiana as set out in *Community Hospital v. Carlisle*, a case involving the same issue presented in the case before us and based on Indiana's hospital lien statute. That court stated:

Where settlement, compromise or other proceeds are sufficient to pay all interested parties, rules regarding order of payment serve no useful function. A problem arises only where funds are insufficient to meet all claims.

Carlisle, 684 N.E.2d at 365.

The Indiana court recognized the various interests which that state's statute attempted to accommodate and noted that by expressly allowing attorneys to collect their fees before satisfaction of other liens, the statute helped ensure that personal injury claims are pursued on behalf of injured persons who cannot initially afford attorney fees. *See id.* Both the Tennessee statute and the Indiana statute, by different methods, ensure that the injured person's recovery cannot be depleted by the hospital's lien. Tenn. Code Ann. § 29-22-101(b) limits the hospital lien to one-third of the damages recovered.

* * *

Other provisions of the Tennessee hospital lien statutes contravene any implication that the hospital's recovery can be reduced by anything other than its statutory one-third limit. The statutes provide that any acceptance of a release of a claim for damages and any settlement of such claim, in the absence of a release of the lien by the hospital lienholder, constitute an impairment of the hospital's lien. Tenn. Code Ann. § 29-22-104(b)(1).

Martino v. Dyer, No. M1999-02397-COA-R3-CV, 2000 Tenn. App. LEXIS 764, at **6-9 (Tenn. Ct. App. Nov. 22, 2000), *no appl. perm. appeal filed*.

In *Martino*, we noted that “[i]n essence, the trial court required the hospital to pay [the plaintiff's] lawyer as if he had also been the hospital's lawyer.” *Id.* In the case now before us on appeal, the ruling of the Trial Court achieves the same result, i.e., the Hospital has been ordered to pay Plaintiff's attorney even though the Hospital did not hire this attorney, and despite the fact that this attorney at times pursued objectives contrary to the Hospital's interests. In *Martino*, the attorney asserted that the Trial Court's order recognized the benefit bestowed upon the hospital due to the efforts of the plaintiff's attorney. *Id.* at *10. However, in *Martino* we noted:

The general rule in Tennessee, however, is to the contrary.

There are, of course, many situations in which the work of an attorney proves useful to persons other than his own client. The normal rule in such cases is that he must look only to his client, with whom he has contracted, for his compensation, notwithstanding the acceptance of benefits by others.

Travelers Ins. Co. v. Williams, 541 S.W.2d 587, 589 (Tenn. 1976).

Id. at **10-11.

Martino also addressed several arguments asserted as alternative bases for the trial court's decision to reduce the hospital lien by the amount of the attorney's lien including *quantum meruit*, subrogation, and the common fund doctrine, finding and holding that none of the asserted alternative bases would apply. *Id.* at **11-23.

Plaintiff argues on appeal that she had the right to contest the hospital lien by filing a motion to quash, which she did. As pertinent to this appeal, Tenn. Code Ann. § 29-22-102 provides:

29-22-102. Perfecting lien – Filing and notice – Contesting – Effect of settlement or payment. – (a) In order to perfect such lien, the agent or operator of the hospital, before or within one hundred twenty (120) days after any such person shall have been discharged therefrom, shall file in the office of the clerk of the circuit court of the county in which the hospital is located, and in the county wherein the patient resides, if a resident of this state, a verified statement in writing setting forth the name and address of the patient as it appears on the records of the hospital, and the name and address of the operator thereof, the dates of admission and discharge of the patient therefrom, the amount claimed to be due for such hospital care, and to the best of the claimant's knowledge, the names and addresses of persons, firms or corporations claimed by such ill or injured person or by such person's legal representative, to be liable for damages arising from such illness or injuries.

* * *

(d) Any person desiring to contest such a lien or the reasonableness of the charges thereof may do so by filing a motion to quash or reduce the same in the circuit court of the county in which the lien was perfected, making all other parties in interest respondents thereto. Any such motion may be heard in term time or vacation and at such time and place as may be fixed by order of the court....

Tenn. Code Ann. § 29-22-102 (2000).

Plaintiff argues that “[t]he record before this Court is totally void of any proof as to the reasonableness of any of the medical bills as they were related to the accident in the underlying lawsuit.” Unfortunately for Plaintiff, the record is devoid of any evidence showing that the medical bills related to the accident were not reasonable. The Hospital Lien states: “the amount due for these services is \$2,199.04, a sum that is a reasonable charge for the hospital care, services, treatment and/or maintenance rendered [Plaintiff].” Although Plaintiff claimed in her motion to quash the hospital lien that the amount was unreasonable, Plaintiff produced no evidence refuting the Hospital’s assertion in its verified Notice of Hospital Lien that the charges were reasonable. The Trial Court implicitly found the charges to be reasonable and necessary when it granted the Hospital its lien. The evidence does not preponderate against the Trial Court’s implicit finding that the charges were reasonable and necessary, and, we, therefore, must presume that this finding is correct.

We modify the Trial Court’s January 2, 2008 order to show that the Hospital’s lien filed on April 15, 2006 in the amount of \$2,199.04 is not reduced by one-third. We affirm the order as so modified.

Conclusion

The judgment of the Trial Court is modified such that the hospital lien filed by Roane Medical Center on April 15, 2006 in the amount of \$2,199.04 is not reduced by one-third, and the judgment is affirmed as so modified. This cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellee, Willie R. Breazeale.

D. MICHAEL SWINEY, JUDGE